



28 MAR 2008

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JAMES C. WRAY
1493 CHAIN BRIDGE ROAD, SUITE 300
MCLEAN, VA 22101

In re Application of LANDAZURI :
U.S. Application No.: 10/585,198 :
PCT Application No.: PCT/EP2003/014985 : DECISION
Int. Filing Date: 30 December 2003 :
Priority Date Claimed: none :
Attorney Docket No.: KOB :
For: CREAM FILLER COMPOSITION AND :
METHOD FOR PREPARING :

This is in response to applicant's "Renewed Petition Under 37 CFR 1.47(b)" filed 06 March 2008.

BACKGROUND

On 30 December 2003, applicant filed international application PCT/EP2003/014985. A copy of the international application was communicated to the USPTO from the International Bureau on 14 July 2005. The thirty-month period for paying the basic national fee in the United States expired on 30 June 2006.

On 30 June 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 16 February 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 10 April 2007, applicant filed a response.

On 17 September 2007, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916).

On 17 October 2007, applicant filed a petition under 37 CFR 1.47(b).

On 28 November 2007, this Office mailed a decision dismissing the 17 October 2007 petition.

On 03 January 2008, applicant filed a renewed petition under 37 CFR 1.47(b).

On 01 February 2008, this Office mailed a decision dismissing the 03 January 2008 renewed petition.

On 06 March 2008, applicant filed the present second renewed petition under 37 CFR 1.47(b).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(i), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. See 37 CFR 1.47(b).

Petitioner has previously satisfied items (1)-(4) and (6) above.

With regard to item (5) above, the 37 CFR 1.47(b) applicant must prove that, as of the date the application was deposited in the Patent and Trademark Office, (A) the invention has been assigned to the applicant, or (B) the inventor has agreed in writing to assign the invention to the applicant, or (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify filing of the application. MPEP 409.03(f).

In the present case, item (B) applies. Petitioner has furnished a copy of an employment agreement signed by the inventor. Such employment agreement specifies that inventions made by the employee during and as a result of his employment become property of the employer (See "Article 10" of Annex 3). Petitioner has provided a supplemental affidavit from Roland Coen, i.e. the person with purported firsthand knowledge of the present invention being made by the inventor during and as a result of his employment with the employer Amylum Belgium NV ("Amylum"). Mr. Coen's supplemental affidavit states that Mr. Coen personally observed Mr. Landazuri making the present invention during Mr. Landazuri's employment with Amylum. Thus, petitioner has adequately established that the 37 CFR 1.47(b) applicant Tate & Lyle Europe NV has sufficient proprietary interest in the present invention.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(b) is GRANTED.

This application has an international filing date of 30 December 2003, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 03 January 2008.

As set forth in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Lin

Bryan Lin
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303
Facsimile: 571-273-0459



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THOMAS LANDAZURI
BURCHSTRAAT 10
AALST, BELGIUM
B-9300

In re Application of LANDAZURI
U.S. Application No.: 10/585,198
PCT Application No.: PCT/EP2003/014985
Int. Filing Date: 30 December 2003
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METHOD FOR PREPARING

Dear Thomas Landazuri:

You are named as the inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(b) and 35 U.S.C. 118. Should a patent be granted, you will be designated as the inventor.

As the named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Bryan Lin
Bryan Lin
PCT Legal Examiner
PCT Legal Office
Telephone: 571-272-3303
Facsimile: 571-273-0459

JAMES C. WRAY
1493 CHAIN BRIDGE ROAD, SUITE 300
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